



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd floor
New York, New York 10007*

February 2, 2021

BY ECF

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

*Knight First Amendment Inst. et al. v. Dep't of State et al.,
No. 20 Civ. 4911 (JGK)*

Dear Judge Koeltl:

We write respectfully on behalf of the parties in the above-referenced Freedom of Information Act ("FOIA") case to provide the Court with a status report with regard to the remaining defendants' processing of plaintiffs' FOIA request.

As a preliminary matter, defendants note that their ability to process FOIA requests, including the request in this case, remains constrained by staffing restrictions necessitated by the ongoing COVID-19 public health emergency. The limitations are particularly pronounced with regard to review of records residing on classified record systems, which cannot be reviewed remotely.

Department of State: As noted in the previous status report, State's searches of unclassified record systems identified, after preliminary de-duplication and responsiveness review processes, approximately 3,600 potentially responsive pages to further review and process. State's search of classified record systems yielded an additional approximately 7,300 pages of potentially responsive records, although that figure includes duplicates and draft manuscripts, which plaintiffs have agreed to exclude. State made its initial production to plaintiffs on October 22, 2020, a second production on December 2, 2020, and a third production on January 13, 2021. So far, State has processed approximately 3,400 pages of its initial search results. State has also referred certain records to other agencies for consultation, many of which have recently been returned to State for further processing and final determinations. State expects to continue making productions on a rolling basis.

Central Intelligence Agency: As noted in the previous status report, CIA completed the bulk of its review of the priority records identified through non-email searches and made an initial production on October 23, 2020. CIA's searches for email records responsive to the priority portions of the FOIA request identified approximately 7,000 pages of potentially responsive email records. CIA is processing these email records on a rolling basis by author, and made a production on January 8, 2021, of records relating to review of a publication by former CIA Director Brennan. CIA has also referred records to other agencies or entities for consultation. At this time, CIA still expects to complete production of all responsive, non-exempt records responsive to the priority portions of the FOIA request that do not require inter-agency consultation by April 1, 2021.

Office of Director of National Intelligence: As noted in the previous status report, ODNI made an initial production of responsive, non-exempt records to plaintiffs on October 29, 2020. The remaining responsive records identified by ODNI as potentially responsive to the FOIA request require consultation with other agencies.

National Security Agency: As noted in the previous status report, NSA has completed the priority portions of the FOIA request. With regard to the non-priority portions of the request, NSA has completed its search and located approximately 95 pages of potentially responsive records. NSA expects to complete processing of those records by the end of March.

Federal Bureau of Investigation: FBI has located (or received referrals or consultations from other agencies of) a total of 2,545 pages of records potentially responsive to the FOIA request. In accordance with the Stipulation and Order, FBI made an initial production of non-exempt records on December 14, 2020, and a second production on January 14, 2021. The Stipulation and Order provides that FBI will make its best efforts to review and process 500 pages of potentially responsive records per month. As explained in the attached declaration, however, due to the ongoing public health emergency, the FBI's Records/Information Dissemination Section ("RIDS"), which is responsible for processing records in response to FOIA requests, has reduced staffing by 50 percent as of December 7, 2020. Until full staffing resumes, FBI anticipates that it will be able to process approximately 250 pages per month.

Department of the Air Force: The Department of the Air Force made a production of responsive records on December 1, 2020. The Air Force is still in the process of conducting supplemental searches to determine whether it possesses any additional responsive records.

We thank the Court for its consideration of this letter, and propose to submit a further status report on or before April 2, 2021.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: /s/ Sarah S. Normand
SARAH S. NORMAND
Tel.: (212) 637-2709
Sarah.Normand@usdoj.gov

Counsel for Defendants

WACHTELL, LIPTON, ROSEN &
KATZ

By: /s/ Jonathan M. Moses
Jonathan M. Moses
Tel: (212) 403-1000
JMMoses@wlrk.com

Counsel for Plaintiffs

Encl.

Application granted. SO ORDERED. New York, New York February 8, 2021	<u>/s/ John G. Koeltl</u> John G. Koeltl U.S.D.J.
---	---